

**CHIEF JUDGE
HARRY LEE HUDSPETH**

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

1999 SEP 27 P 12:43
CLERK U.S. DISTRICT
COURT WESTERN DISTRICT
OF TEXAS
BY Kod 10

STATE OF TEXAS,
Plaintiff,
V.
YSLETA DEL SUR PUEBLO, TIGUA
GAMING AGENCY, THE TRIBAL
COUNCIL, TRIBAL ACTING
GOVERNOR FILBERT CANDELERIA,
AND GAMING COMMISSIONER
FRANCISCO HERNANDEZ,
Defendants.

CIVIL ACTION NO.

EP99CA0320

ORIGINAL COMPLAINT FOR INJUNCTIVE RELIEF

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, John Cornyn, the Attorney General of the State of Texas on behalf of the State of Texas and requests that this Court issue an injunction prohibiting the defendants, the Ysleta del sur Pueblo (Tiguas), their Tribal Council, their acting Tribal Governor Filbert Candeleria, the Tigua Gaming Agency and its Commissioner, Francisco Hernandez from continuing to violate the Ysleta del sur Pueblo and Alabama Coushatta of Texas Restoration Act (Restoration Act), 25 U.S.C. § 1300g-6 by conducting gaming activities on their restored land which are prohibited by the laws of the State of Texas.

I. Jurisdiction

This court has jurisdiction over this action under 28 U.S.C. § 1331 and 25 U.S.C. § 1300g-6(c) as this claim arises under the Restoration Act (25 U.S.C. §1300g-6(a). Venue is proper in this court pursuant to 28 U.S.C. § 1391(b).

II. Parties

The State of Texas is a sovereign state of the United States within the boundaries of which is located the Tigua Indian Reservation.

Defendant, Ysleta del sur Pueblo (Tiguas), is a federally recognized Indian Tribe pursuant to the Restoration Act (25 U.S.C. § 1300 g-1) with a reservation located in El Paso County, Texas. The Tribal Council is the duly constituted traditional governing body. The Governor is a member of the Tribal Council and the Governor has acted on behalf of the Council to sign Tribal Resolution TC-06-96 authorizing gaming on the Tigua Indian Reservation. These Defendants can be served by serving acting Governor Filbert Candeleria at 119 S. Old Pueblo Rd., El Paso, Texas 79917.

Defendant, Tigua Gaming Agency, purports to regulate gaming conducted on the Tigua Indian Reservation. The Commissioner of the Tigua Gaming Agency is Francisco Hernandez. These defendants can be served by serving Commissioner Hernandez at 122 S. Old Pueblo Rd., El Paso, Texas 79917.

III. Facts

1. In August of 1987, Congress passed House Resolution 318 granting federal tribal status to the Ysleta del sur Pueblo Indians. The Restoration Act, 25 U.S.C. § 1300g *et seq.*, provides for the restoration of the trust relationship between the United States and the Ysleta del sur Pueblo Indians.

2. Section 1300g-6 of the Restoration Act provides:

All gaming activities which are prohibited by the laws of the State of Texas are hereby prohibited on the reservation and on the lands of the tribe. Any violation of this prohibition provided in this subsection shall be subject to the same civil and criminal penalties that are provided by the laws of the State of Texas.

25 U.S.C. § 3000g-6

3. Subsection (c) of § 1300g-6 authorizes the State of Texas to bring an action in the courts of the United States to enjoin violations of the provisions of this act.

4. During the adoption of the Restoration Act, as an assurance to the members of the Texas congressional delegation, the Tribal Council pledged before Congress, in Resolution No. TC-02-86, that it "has no interest in conducting high stakes bingo or other gambling operations on its reservation" and that it "remains firm in its commitment to prohibit outright any gambling or bingo in any form on its reservation." The Restoration Act explicitly states that § 1300 g-6 is adopted in accordance with the tribe's request embodied in the resolution.

5. In 1993, Ysleta del Sur Pueblo established Speaking Rock Casino on reservation lands located within the State of Texas and began gambling in violation of the laws of Texas and the Restoration Act.

6. On February 14, 1996 the Tribal Council considered and enacted Gaming Ordinance No. 001-96 authorizing high stakes gaming activities on the Tigua Indian Reservation and establishing the Tigua Gaming Agency to regulate such gaming. On the same day, the Tribal Council passed and authorized the Governor of the Pueblo to sign Tribal Resolution TC-06-96 which adopted the ordinance.

7. The Tiguas have operated and continue to operate the Speaking Rock Casino and Entertainment Center located at 122 South Old Pueblo Road, Ysleta, Texas.

8. Speaking Rock Casino offers high-stakes bingo, keno, slot machines, poker, and Tigua 21, a form of blackjack. Speaking Rock Casino is a public place of business operated by the Tiguas for economic profit. The Tiguas advertise on billboards around the city of El Paso. In addition, they operate a web page advertising the games and weekly specials at the casino.

9. The Tiguas operate high-stakes bingo at Speaking Rock Casino. Sessions are held nightly at 6:30 p.m. with additional afternoon sessions at 1:30 p.m. on Friday, Saturday, and Sunday. Special sessions with higher jackpots are held the last Friday of every month. Sessions consist of eight games with one intermission. The Speaking Rock casino sells bingo cards for each session at three different levels. Additional packs can be purchased for each level. Card pack prices vary from \$7.00 to \$25.00. The casino also offers a Tigua Value Pack for \$20.00. Every person entering the bingo hall is required to buy a pack at one of the levels. Players may not share or split packs. Play begins when a caller pulls randomly selected bingo balls with a number letter inscription. Players mark the spaces on their cards corresponding to the number called. When any player successfully marks a pre-set pattern on her card, she shouts "BINGO". The caller will then verify the numbers marked on the card to declare the winner. General sessions prizes are \$1,000. In addition to each individual game of bingo there are several side games that take place simultaneously. For example, Speaking Rock casino has a side game called "Krazy Kash" jackpot. In "Krazy Kash" jackpot, if a player wins within the first 45 numbers drawn in game 1 of a session she wins a jackpot. These side prizes awarded can be as high as \$10,000.00.

10. Keno is a game whereby prizes are distributed by chance among players who have paid consideration for a chance to win. To play keno, a person selects numbers from a pool of one to eighty. A player can pick any amount of numbers up to twenty. A player must pay the house between \$1.00 to \$5.00 to play. After marking her chosen numbers on a card, a player gives her numbers to a runner to be processed before a random number drawing. Display boards throughout the casino display the "winning" numbers for each game. A player's winnings are a function of the amount of numbers for a drawing selected by the player and the amount of numbers in the player's selection which match the "winning" numbers. A player can win anywhere from \$3.00 to \$25,000. Players can bet on multiple games at once.

11. A player may also choose the 20 Pick Special. The player picks twenty numbers and pays \$5.00. The results are based on the keno numbers displayed for the regular keno game. The payout ranges from nothing to \$25,000.

12. The Speaking Rock Casino offers a game similar to blackjack called Tigua 21. In Tigua 21, cards are assigned point values, with numbered cards worth their face value and Jokers, Queens and Kings worth 10 points. Aces are assigned a value of one or eleven at the player's option. All players at the table play against the dealer. The object of the game is to attempt to get as close to twenty-one, without going over, from the cards dealt to a player. Speaking Rock Casino allows the player to double his bet by splitting the first cards dealt if they are of like value or doubling down for one card if the player has a ten or eleven after two cards are dealt to him. The dealer is required to take a card if he has 16 points, but stand if he has seventeen. In order to play Tigua 21, a player, before each hand, pays the house 50 cents.

13. The Speaking Rock Casino operates a game called Jackpot Poker. In Jackpot Poker, a player places a flat bet and pays one dollar to the house. After all bets are placed, the dealer places one card face up in the middle of the table. The dealer then deals five cards to the player and five cards to the house. When each player and the house have five cards, the dealer will deal a second card face-up in the center of the table. After viewing their cards, the players may lay down an additional "odds" bet or fold, forfeiting the original minimum wager. The house will then turn its hand setting its best five card hand using or discarding the two cards dealt face-up in the center of the table. Each player tries to beat the house based on the normal poker progression. If a player wins he receives his flat bet and the odds bet. Special hands such as a full house, flush, straight, three of a kind pay at posted odds. A straight flush or royal flush pay according to a posted meter.

14. The Speaking Rock Casino operates card games between players. The casino offers poker games requiring a player to obtain the best hand using five cards. The dealer takes out a percentage of the pot before the winnings are distributed.

15. The Ysleta del sur Pueblo operate slot machines at the Speaking Rock Casino. These slot machines have either a video display screen, or three drums. These drums have symbols like bells, bars, and cherries inscribed on them. After a player inserts money into the machine, a player presses a button to start the drums. If the drums have the correct icons in the required order when they stop, the player wins. If there is a winning combination the machine will award the player the number of credits or winnings payable based on the particular combinations. The player may elect to continue wagering or collect his winnings after each game.

16. Gambling is illegal in Texas and against the public policy of the State. The Texas Constitution prohibits gambling. TEX CONST. art. III, § 47.

17. The Texas Constitution provides:

The Legislature shall pass laws prohibiting lotteries and gift enterprises in this State other than those authorized by Subsections (b),(d), and (e) of this section.

TEX. CONST. art. III, §47(a)

18. The Texas Penal Code defines "lottery" as any scheme or procedure whereby one or more prizes are distributed by chance among persons who have paid or promised consideration for a chance to win anything of value. TEX. PENAL CODE ANN. §47.01(7).

19. Under Texas law, bingo is an illegal lottery. *State v. Amvets Post 80*, 541 S.W.2d 481 (Tex. Civ. App.-Dallas 1976, no writ). The Texas Constitution allows churches, synagogues, volunteer fire departments and other nonprofit organizations to conduct bingo operations. Tex. Const. Art. III, §47(b),(d). These organizations must meet statutory and constitutional requirements including submitting quarterly financial reports to the Comptroller of Public Accounts on proceeds collected from bingo operations and the purposes for which such proceeds are spent. TEX. CONST. art. III §47(b), TEX. CIV. STAT. ANN. art 179d. In addition these organizations must be licensed under the Bingo Enabling Act, TEX. CIV. STAT. ANN. art. 179d. The bingo operations at Speaking Rock Casino violate the Texas Constitution, are not licensed under the Bingo Enabling Act, and violate the Texas Penal Code.

19. The Texas Penal Code makes the following acts illegal:

§ 47.02 Gambling

(a) A person commits an offense if he:

- (1) makes a bet on the partial or final result of a game or contest or on the performance of a participant in a game or contest;
- (2) makes a bet on the result of any political nomination, appointment, or election or on the degree of success of any nominee, appointee, or candidate; or

(3) plays and bets for money or other thing of value at any game played with cards, dice, balls, or any other gambling device.

TEX. PENAL CODE § 47.02(a).

Games such as bingo, keno, slots, "Tigua 21," Jackpot Poker and Poker violate TEX. PENAL CODE ANN. § 47.02(a)(3).

20. The Ysleta sur del Pueblo and the other defendants are in violation of § 47.03 and § 47.04 of the Texas Penal Code in that they own and operate the Speaking Rock Casino and Entertainment Center on tribal land. The Ysleta sur del Pueblo profits from the operation of its casino. In addition, the defendants advertise and promote the casino and the gaming activities conducted there. These acts are done intentionally or knowingly. The Texas Penal Code provides:

§ 47.03. Gambling Promotion

(s) A person commits an offense if he intentionally or knowingly does any of the following acts:

- (1) operates or participates in the earnings of a gambling place;
- (2) engages in bookmaking;
- (3) for gain, becomes a custodian of anything of value bet or offered to be bet;
- (4) sells chances on the partial or final result of or on the margin of victory in any game or contest or on the performance of any participant in any game or contest or on the result of any political nomination, appointment, or election or on the degree of success of any nominee, appointee, or candidate; or
- (5) for gain, sets up or promotes any lottery or sells or offers to sell or knowingly possesses for transfer, or transfers any card, stub, ticket, check, or other device designed to serve as evidence of participation in any lottery.

(b) An offense under this section is a Class A misdemeanor.

TEX. PENAL CODE ANN. § 47.03

Section 47.04 provides:

§ 47.04. Keeping a Gambling Place

(a) A person commits an offense if he knowingly uses or permits another to use as a gambling place any real estate, building, room, tent, vehicle, boat, or

other property whatsoever owned by him or under his control, or rents or lets any such property with a view or expectation that it be so used.

TEX. PENAL CODE ANN. § 47.04(a)

21. The Speaking Rock Casino is a public place, actively advertised to the public as a casino and an entertainment center. The Tribe operates and directly participates in the casino. In addition, the Tiguas have set up and promote a lottery, in the form of slot machines and high-stakes bingo, in the Speaking Rock casino in violation of the Texas Constitution and the Bingo Enabling Act. TEX. CONST. art. III, §47, TEX CIV. STAT ANN. art. 179d, *State v. Amvets Post 80*, 541 S.W.2d 481. The operation of the gaming operations at the Speaking Rock casino are in violation of TEX. PENAL CODE ANN. § 47.03 and § 47.04.

22. The Ysleta del sur Pueblo gaming operations violate TEX. PENAL CODE ANN. § 47.06 which provides:

§ 47.06. Possession of Gambling Device, Equipment, or Paraphernalia

- (a) A person commits an offense if, with the intent to further gambling, he knowingly owns, manufactures, transfers, or possesses any gambling device that he knows is designed for gambling purposes or any equipment that he knows is designed as a subassembly or essential part of a gambling device.
- (b) A person commits an offense if, with the intent to further gambling, he knowingly owns, manufactures, transfers commercially, or possesses any altered gambling equipment that he knows is designed for gambling purposes or any equipment that he knows is designed as a subassembly or essential part of such device.

TEX. PENAL CODE ANN. § 47.06(a).

23. TEX. PENAL CODE ANN. § 47.01(4) defines "Gambling device" as

Any electronic, electromechanical, or mechanical contrivance not excluded under Paragraph (B) that for a consideration affords the player an opportunity to obtain anything of value, the award of which is determined solely or partially by chance, even though accompanied

by some skill, whether or not the price is automatically paid by the contrivance. The term:

(A) includes, but is not limited to, gambling device versions of bingo, keno blackjack, lottery, roulette, video poker, or similar electronic, electromechanical, or mechanical games, or facsimiles thereof, that operate by chance or partially so, that as a result of the play or operation of the game award credits or free games, and that record the number of free games or credits so awarded and the cancellation or removal of the free games or credits.

TEX. PENAL CODE ANN. §47.01(4)

24. The Tiguas possess or own slot machines, video bingo machines, and keno machines located in the Speaking Rock Casino. These machines are in operation 24 hours a day for the purpose of gambling by the patrons of the Speaking Rock Casino. The Tiguas also operate bingo at Speaking Rock Casino. The Tiguas actively promote these machines for gambling purposes both on the Internet and on local billboards. The Tiguas are in violation of TEX. PENAL CODE ANN. § 47.06.

25. The State of Texas Penal Code provides a defense to the offenses listed under Chapter 47 for conduct authorized under the State Lottery Act, the Bingo Enabling Act, or the Charitable Raffling Act. TEX. PENAL CODE ANN. § 47.09. The Ysleta del sur Pueblo is not a charitable organization covered by the charitable Raffle Enabling Act. The games in operation are not authorized by the State of Texas in accordance with the State Lottery Act. The Tigua are not licensed to conduct bingo operations under the Bingo Enabling Act. These defenses are not applicable to the current gaming operations at the Speaking Rock Casino.

26. All gaming activities which are prohibited by the laws of the State of Texas are prohibited on the reservation and on the lands of the tribe. 25 U.S.C. § 1300g-6(a). Texas law

functions as surrogate federal law. *Ysleta del Sur Pueblo*, 36 F.3d at 1335. Accordingly, the operation of Speaking Rock Casino on Texas lands is a violation of Texas law, and therefore a violation of Restoration Act (25 U.S.C. § 1300g-6(a)).

REQUEST FOR INJUNCTIVE RELIEF

Pursuant to the Restoration Act. 25 U.S.C. § 1300g-6(c) the State of Texas asks this Court to set this matter for trial and to enjoin the defendants from operating gaming activities at Speaking Rock Casino which violate the gaming laws of the State of Texas and thereby violate the Restoration Act, 25 U.S.C. § 1300g-6.

PRAYER

WHEREFORE, PREMISES CONSIDERED, The State of Texas respectfully requests that the Ysleta del sur Pueblo, their Tribal Council, their acting Tribal Governor Filbert Candeleria, the Tigua Gaming Agency and its Commissioner Fransisco Hernandez be cited to appear and upon final trial of this matter, have and recover the following judgment :

1. A permanent injunction enjoining the Ysleta del sur Pueblo, the Tribal Council, Governor Candeleria, the Tigua Gaming Agency, Commissioner Hernandez and all persons acting in concert with, for or on behalf of the Defendants including their agents or employees from operating gaming operations in violation of the laws of the State of Texas on any reservation lands located within the State of Texas;
2. costs;
3. and for all other relief to which it is justly entitled.

JOHN CORNYN
Attorney General of Texas

ANDY TAYLOR
First Assistant Attorney General

SHANE PHELPS
Deputy Attorney General for Criminal Justice

LINDA EADS
Deputy Attorney General for Litigation

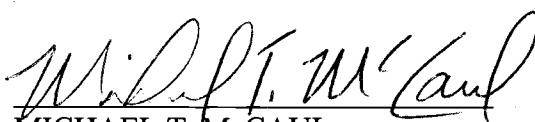
TONI HUNTER
Chief, General Litigation Division

DEBRA VERBIL
BRYAN GANTT
Assistant Attorneys General
General Litigation Division

DAVID PURYEAR
Deputy Chief, Special Crimes Division

BILL LEWIS
Assistant Attorney General
Special Crimes Division

KAREN RAY
Assistant Attorney General
Law Enforcement Defense Division


MICHAEL T. McCaul
Special Assistant Attorney General
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548
State Bar No. 13381050
Tel: (512) 936-1882
Fax: (512) 463-2063